

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF)

JOHN MOLLER,)
PETROCHEM DEVELOPMENT I, LLC,)
and)
DANSK INVESTMENT GROUP, INC.)

USA Petroleum Refinery Site)
Ventura, Ventura County, CA)

Respondents)

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. OPA 09-2013-002

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("AOC" or "Order") is issued pursuant to the authority vested in the U. S. Environmental Protection Agency ("EPA") by Sections 311(c) and (e) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(c) and (e), and Section 308 of the CWA, 33 U.S.C. § 1318.

2. This Order pertains to the site of the former USA Petroleum oil refinery and tank farm ("Facility") located at 4777 Crooked Palm Road, Ventura, CA (unincorporated Ventura County).

3. At the request of the Ventura County Environmental Health Voluntary Cleanup Program ("VCEHP"), oversight of cleanup operations at the Facility was transferred to the United States Environmental Protection Agency, Region IX. The request by VCEHP satisfies the state notification requirement in Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

4. The National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 ("NCP"), and the Oil Pollution Prevention Regulations, 40 CFR Part 112, establish procedures to respond to the discharge of oil from non-transportation-related onshore facilities into the waters of the United States or adjoining shorelines pursuant to the authority in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

II. PARTIES BOUND

1. This Order applies to and is binding upon EPA and upon Respondents and their heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

2. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

3. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

1. The Facility's crude oil refining processing units and tank farm were constructed around 1975 and processing ceased in 1984. The site of the Facility also contains an abandoned loading rack, wastewater treatment plant, ammonia plant, nitric acid plant, mechanical shop, and administrative offices and warehouses. However, this order only applies to the cleanup of oil, oily substances, pipelines, and tanks at the former refinery and tank farm.

2. After the cessation of processing at the refinery in 1984, Dansk Investment Group, Inc. ("Dansk") purchased the Facility and all equipment. Dansk owned and operated the Facility until late 2005. In late 2005, Dansk sold the Facility and all equipment on the Facility to Petrochem Development I, LLC ("Petrochem"), a single member LLC owned by John Moller ("Moller"). Petrochem is the current owner and operator of the Facility and all equipment on the Facility site.

3. The Facility contains at least two above ground oil-storage tanks with a capacity of greater than 50,000 barrels each (tanks 1 and 2). These tanks currently contain approximately a

combined total of 2500 barrels of crude oil (approximately 137,500 gallons). The crude oil in these tanks has mixed with crude oil storage tank sediment.

4. The Facility also contains six other storage tanks that are estimated to contain a combined total of 4,800 barrels of fuel oil, crude oil, oily substances, and refinery chemicals.

5. The Facility is in close proximity to “navigable waters” of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR § 110.1, specifically, the Facility’s western boundary is adjacent to the Ventura River. The Ventura River drains into the Pacific Ocean approximately six miles downstream from the Facility.

6. In response to VCEHP’s request that EPA oversee site cleanup, EPA conducted an initial site assessment on August 16, 2012. At least as of the date of EPA’s initial site assessment, there were numerous leaking pipelines, leaking tanks, and leaking production vessels throughout the property.

IV. CONCLUSIONS OF LAW

1. The Facility is an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

2. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. Based on current conditions, EPA has determined that there has been a “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 CFR § 112.2, on the adjoining shorelines to navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

4. Based on current conditions, EPA has determined that there exists a substantial threat of a "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 CFR § 112.2, into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

5. EPA has determined that, based on the amount of oil and other petroleum products currently stored in the Facility's tank farm and the amount of leaking oil that continues to contaminate the soil at the Facility, the quantity of oil that the Facility may discharge is a harmful quantity within the meaning of Sections 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3), (4), and 40 CFR § 110.3(b).

6. EPA has determined that conditions at the Facility may present an imminent and substantial threat to public health or welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

7. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

8. The actions required by this Order are in accordance with the NCP and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

9. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Order. Solely for the purposes of this Order, Respondents will not contest the jurisdiction

of EPA under Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e) to request this removal action and for bringing the claims alleged herein.

V. ORDER

1. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders Respondents to perform the following actions:

A. Respondents shall complete all Facility upgrades and corrective actions, and submit all reports and documentation as described in Appendix A - Scope of Work, which is hereby incorporated into this Order. All Work and Reports and Documentation described in the Scope of Work shall be completed according to the deadlines set forth in the Scope of Work unless EPA grants an extension for the completion thereof.

B. Respondents shall send all Reports and Documentation to:

Maggie Waldon, On-Scene Coordinator
U.S. Environmental Protection Agency - Region IX
75 Hawthorne St.
San Francisco, CA 94105

And provide electronic copies of all reports to: waldon.margaret@epa.gov

VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

1. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within three (3) days of the Effective Date. If Respondents hire additional contractors or subcontractors subsequent to the Effective Date of this Order, Respondents shall notify EPA of the name(s) and qualification(s) of these

contractor(s) or subcontractor(s) retained to perform the Work at least three (3) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within five (5) days of EPA's disapproval.

2. Within three (3) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

3. EPA has designated Maggie Waldon of the Emergency Response Section, Region IX, as its OSC. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC at the address listed in Paragraph V(1)(B).

4. EPA and Respondents shall have the right, subject to Paragraph VI (2), to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VII. FORCE MAJEURE

1. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents (or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors) which delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Scope of Work or increased cost of performance.

2. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within three (3) days of when Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

3. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

VIII. STIPULATED PENALTIES

1. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs IX (5) and IX (6) for failure to comply with the requirements of this Order specified below and in the Scope of Work (Appendix A), unless excused under Section VII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Order or any work plan or other plan submitted by Respondents and approved under this Order in accordance with all applicable requirements of law, this Order, the Scope of Work, and any plans or other documents submitted by Respondents and approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

2. Pursuant to the CWA, a court may subject Respondents to civil penalties of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability

Trust Fund pursuant to Section 311(b)(7) of the Act, 33 U.S.C. § 1321(b)(7) and 40 CFR Part 19, for violation of, or failure to comply with, the provisions of the foregoing Order. Provided, however, EPA shall not seek civil penalties for violations of this Order for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. In the case of a willful violation of this order, EPA shall elect between seeking stipulated or statutory penalties.

3. If Respondents are unable to comply with the requirements of this Order, Respondents shall notify Maggie Waldon at (415) 940-1109 within 24 hours of becoming aware of such inability.

4. Nothing in this Order shall be construed to relieve Respondents of the requirements of the CWA or any other applicable requirements under federal, state or local law. Except as specified in Section VIII (2) herein, EPA reserves the right to take, direct, or order all actions as necessary as authorized by law for any violation of this Order, and for any future or past violations of the CWA or any other law.

5. Stipulated penalties continue to accrue during Dispute Resolution, but need not be paid until the Dispute Resolution process, as described in this Order is completed.

6. Stipulated Penalty Amounts - Work.

A. The following stipulated penalties shall accrue per violation per day for any noncompliance with the Work items and schedule identified in all subsections of Paragraph II of Appendix A - Scope of Work:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ <u>2000</u>	1st through 14th day
\$ <u>5000</u>	15th through 30th day
\$ <u>7000</u>	31st day and beyond

7. Stipulated Penalty Amounts – Reports and Documentation.

A. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to all subsections of Paragraph I of Appendix A - Scope of Work:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th day
\$ 2000	15th through 30th day
\$ 4000	31st day and beyond

IX. MODIFICATIONS

1. If Respondents seek permission to deviate from this Order or the attached Scope of Work, Respondents shall submit a written request to EPA for approval, outlining the proposed modification and its basis and how the deviation proposed will affect the Scope of Work schedule agreed to with EPA. Such written request will be submitted to:

Maggie Waldon, On-Scene Coordinator
U.S. Environmental Protection Agency - Region IX
75 Hawthorne St.
San Francisco, CA 94105

and

Virgilio Sklar
Office of Regional Counsel
U.S. Environmental Protection Agency – Region IX
75 Hawthorne St.
San Francisco, CA 94105

Such written request may also be submitted by email to Ms. Waldon at waldon.margaret@epa.gov and to Mr. Sklar at sklar.virgilio@epa.gov.

2. Non-material modifications agreed to by Respondents to any portion of the Order may be made in writing under signature of Maggie Waldon, On-Scene Coordinator, EPA Region IX.

3. Respondents shall immediately take all appropriate action to abate or minimize any discharge or substantial threat of a discharge, if any incident during the actions conducted pursuant to this Order causes or may cause, either a substantial threat of a discharge or a discharge of oil or hazardous substances from the Facility. In addition, Respondent shall immediately notify (1) Maggie Waldon at (415) 940-1109; Region IX's On-Scene Coordinator Duty Officer (800) 300-2193 and (3) the National Response Center at (800) 424-8802.

4. Nothing in this Order shall relieve Respondents of any obligation otherwise required by law.

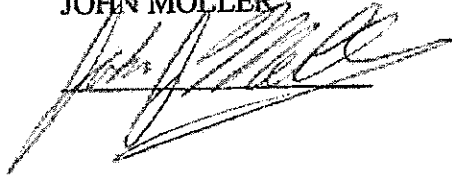
X. EFFECTIVE DATE

1. This Order shall be effective upon receipt by the Respondents of the signed Order.

XI. SIGNATORIES

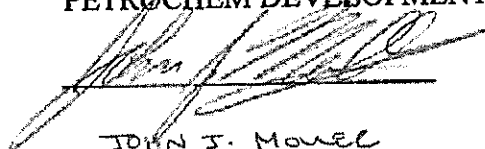
For the Respondents:

JOHN MOLLER



DATE: 1/21/13

PETROCHEM DEVELOPMENT I, LLC



DATE: 1/21/13

JOHN J. MOLLER
USA PETROLEUM/
PETROCHEM DEVELOPMENT AOC
Docket No. OPA 09-____

Print Name

OWNER
Title

DANSK INVESTMENT GROUP, INC



JOHN J. MOLLER

Print Name

Chairman
Title

DATE: 1/21/13

For US EPA:


Jane Diamond
Director, Superfund Division
EPA, Region IX

DATE: 1/30/2013

APPENDIX A - SCOPE OF WORK

I. Reports and Documentation

1. Within three (3) days after the Effective Date of this Order, Respondents shall provide the name of any contractors that will conduct the work outlined in the Scope or Work. All cleanup contractors must be in compliance with Title 29 Code of Federal Regulation Part 1910.120: Hazardous Waste Operations and Emergency Response ("HAZWOPER").

2. No later than five (5) days after the Effective Date of this Order, Respondents shall provide a Work Plan for the removal of all remaining oil, oily sludge, oil contaminated soil, oil-contaminated debris, oily water or refining chemicals. The Work Plan may be one previously submitted to a county or state agency if it has been approved by that agency. EPA will review the plan and provide comments if necessary. EPA reserves the right to reject prior approved Work Plans if they do not meet EPA requirements. The Work Plan must provide information on how the oil, oily sludge, oil contaminated soil, oil contaminated debris, oily water or refining chemicals will be removed from existing above ground storage tanks, underground storage tanks, reservoirs, process equipment, surface impoundments, pipelines, soil, or any other type of containment; the name(s) of all disposal facilities; methods for the decontamination of the storage units from which oil was removed; and a health and safety plan that complies with 29 CFR 1910.120(b)(4).

3. No later than January 31, 2013, Respondents shall provide a sampling plan for the assessment of soil in areas where spills occurred, and where tanks, process equipment, sumps, or pipelines have been removed. The sampling plan must also assess areas where drainage left or potentially left the Facility and entered or potentially entered the Ventura River. The analyses for the sampling plan must include at a minimum Total Petroleum Hydrocarbons (full range), Volatile Organic Compounds, Semi-Volatile Compounds (including Poly-Chlorinated BiPhenyls), and California Total Threshold Limit Concentration metals. The sampling plan must comply with current EPA guidance for the preparation of such documents.

4. No later than January 31, 2013, Respondents shall provide proof of compliance with HAZWOPER for all employees of USA Petroleum, contractors and subcontractors. This proof must include the following:

- Required Documents
 - Written Safety and Health Program, 29 CFR 1910.120(b)(1)(i);
 - Site Specific Health and Safety Plan, 29 CFR 190.120(b)(4);
 - Written Personal Protective Equipment Program, 29 CFR 1910.120(g)(5);
 - Emergency Response Plan, 29 CFR 1910.120(l)(1)(i); and
 - Written Respiratory Protection Program, 29 CFR 1910.134(c).

- Required Certifications:
 - Training Certifications, 29 CFR 1910.120(e)(6);
 - Proof of Medical Surveillance, 29 CFR 1910.120(f)(7)(D);
 - Proof of Ability to Wear a Respirator, 29 CFR 1910.134(e)(6); and
 - Proof of FIT Testing, 29 CFR 1910.134(f).
- For Permit-Required Confined Space Only:
 - Permit-Required Confined Space Program, 29 CFR 1910.142.(b);
 - Permit System, 29 CFR 1910.142(b); and
 - Confined Space Entry Permit.

[Note: If corporate or contractor employees do not speak English, the above documents must also be provided in their native language include proof that they were trained in their native language. Please note that any violation of the Permit Required Confined Space regulations during cleanup operations will result in the immediate takeover of all site operations by EPA and its contractors.]

5. No later than fifteen (15) days after completion of all Work (Appendix A, Paragraph II) in this Scope of Work, Respondents shall submit evidence of completion of the upgrades and corrective actions required by this Scope of Work in the form of a report ("Completion Report") documenting the same.

II. Work

1. No later than three (3) days after the Effective Date of this Order, Respondents shall maintain site security and prevent access of the site by members of the public, vagrants, or vandals. This may require the use of a 24-hour security service.

2. Outfalls, Drainage, and Conveyances to Ventura River

A) No later than January 31, 2013, Respondents are required to locate and identify any sources of drainage or outfalls from the Facility site. Respondents shall determine whether these outfalls drain to the Ventura River or whether any conveyance runs from the Facility to the Ventura River. Respondents shall permanently close any conveyance or outfall identified pursuant to this final drainage analysis by January 31, 2013. This must be addressed in the Work Plan including the location of all such connections and the methods of closure.

- B) No later than January 31, 2013, Respondents shall blind or close off access to Permit-Required Confined Spaces including tanks, reservoirs, separators, and process equipment.

3. Cleanup of Oil and Oil Contamination. Respondents shall cleanup and remove all oil, oily sludge, oil-contaminated soil, oil-contaminated debris, oily water, and refining chemicals from the Facility. Specifically, the following work must be completed no later than the stated dates:

- A) No later than January 31, 2013, Respondents shall cleanup all spills within the Facility and prevent future spills. All oil-contaminated soils on the Facility shall be cleaned-up and contained for proper disposal offsite by January 31, 2013.
- B) No later than January 31, 2013 all overgrown and contaminated vegetation onsite shall be removed.
- C) No later than January 31, 2013, all oil, oily sludge, oil contaminated debris, fuel oil, oily water, and refining chemicals located in the storage tanks must be removed from the storage tanks in the Facility and ready for proper off-site disposal.
- D) No later than February 15, 2013, conveyances running from offsite to the tank farm, from tanks to the refinery, and from the refinery to the tank farm must be removed and ready for proper off-site disposal. Product from inside all such conveyances and from process equipment must also be removed and ready for proper off-site disposal. The term "conveyances" includes, but is not limited to, piping, pumps, and flanges.
- E) No later than January 21, 2013 Respondents shall submit a work plan and schedule for the cleanup and disposal of all oil and oily substances within all refinery process units. Upon approval by EPA, the schedule and work plan shall become enforceable requirements of this Order.

4. Final disposal of all waste or recycled material to offsite locations shall be completed no later than February 28, 2013.

5. Final removal of all remaining equipment subject to this Order on the Facility site shall be completed no later than February 28, 2013, except for cleaned refinery process units that Respondents intend to sell. Cleaned refinery process units that Respondents do not intend to sell shall be removed from the property according to the EPA-approved schedule and work plan submitted pursuant to Appendix A, Work, Paragraph 3(E) herein.

6. Upon submission to EPA by Respondents of a written request stating a good faith reason for a need to extend any of the above deadlines for Work, EPA may consider granting such an extension in EPA's sole discretion.

